

# **EXHIBIT 24**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re: : Chapter 11  
:   
: Case No.  
W.R. GRACE & CO., et al, : 01-01139 JKF  
:   
: (Jointly  
Debtors : Administered)

Friday, May 1, 2009

Oral deposition of PETER VAN  
N. LOCKWOOD, ESQUIRE, taken pursuant to  
notice, was held at the offices of CAPLIN  
& DRYSDALE, One Thomas Circle N.W., Suite  
1100, Washington, DC 20005, commencing  
at 9:43 a.m., on the above date, before  
Lori A. Zabielski, a Registered  
Professional Reporter and Notary Public  
in and for the Commonwealth of  
Pennsylvania.

MAGNA LEGAL SERVICES  
Seven Penn Center  
1635 Market Street  
8th Floor  
Philadelphia, Pennsylvania 19103

4 (Pages 10 to 13)

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<p>1 EXHIBITS (continued)</p> <p>2</p> <p>3 NO. DESCRIPTION PAGE</p> <p>4 6 Exhibit-19 to Exhibit Book 83</p> <p>5 7 Settlement Agreement</p> <p>6 * CONFIDENTIAL * 144</p> <p>8 Complaint for Declaration of</p> <p>9 the Relief... 175</p> <p>10 9 Diagram 175</p> <p>11 10 Exhibit-2 to Exhibit Book 196</p> <p>12 11 Exhibit-4 to Exhibit Book 224</p> <p>13 12 Exhibit-10 to Exhibit Book 260</p> <p>14 13 Travelers Casualty and Surety</p> <p>15 Company's Notice of Deposition</p> <p>16 to the Official Committee of</p> <p>17 Asbestos Personal Injury</p> <p>18 Claimants... 267</p> <p>19 14 Debtors' Disclosure... 280</p> <p>20 15 Documents bearing Bates stamps</p> <p>21 TRAVAS0000019 through 141</p> <p>22 * CONFIDENTIAL * 289</p> <p>23 16 Notice of Service of Discovery 324</p> <p>24</p>	<p>1 - - -</p> <p>2 (It is hereby stipulated and</p> <p>3 agreed by and among counsel for</p> <p>4 the respective parties that the</p> <p>5 filing, sealing and certification</p> <p>6 of the deposition are waived; and</p> <p>7 that all objections, except as to</p> <p>8 the form of the question, will be</p> <p>9 reserved until the time of trial.)</p> <p>10 - - -</p> <p>11 PETER VAN N. LOCKWOOD,</p> <p>12 ESQUIRE, after having been first</p> <p>13 duly sworn, was examined and</p> <p>14 testified as follows:</p> <p>15 - - -</p> <p>16 EXAMINATION</p> <p>17 - - -</p> <p>18 (ACC 30(b)(6)-1 and 2</p> <p>19 premarked for identification.)</p> <p>20 - - -</p> <p>21 BY MR. BROWN:</p> <p>22 Q. Good morning, Mr. Lockwood.</p> <p>23 A. Good morning, Mr. Brown.</p> <p>24 Q. You are appearing here today</p>
Page 11	Page 13
<p>1 - - -</p> <p>2 DEPOSITION SUPPORT INDEX</p> <p>3 - - -</p> <p>4</p> <p>5 Direction to Witness Not to Answer:</p> <p>6 Page Line Page Line</p> <p>7 NONE</p> <p>8</p> <p>9</p> <p>10 Request for Production of Documents:</p> <p>11 Page Line Page Line</p> <p>12 NONE</p> <p>13</p> <p>14</p> <p>15 Stipulations:</p> <p>16 Page Line Page Line</p> <p>17 12 02</p> <p>18</p> <p>19</p> <p>20 Area(s) Marked Confidential:</p> <p>21 Page Line Page Line</p> <p>22 152 01 through 168 03</p> <p>23 292 01 through 311 14</p> <p>24</p>	<p>1 as the Rule 30(b)(6) designee for the</p> <p>2 ACC, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that is with respect to</p> <p>5 a number of 30(b)(6) notices, correct?</p> <p>6 A. A very large number, yes.</p> <p>7 Q. Can you look at the one</p> <p>8 that's been put before you and marked ACC</p> <p>9 Rule 30(b)(6)-1, which I will call ACC-1</p> <p>10 here after.</p> <p>11 A. I have it.</p> <p>12 Q. Can you identify it?</p> <p>13 A. It is an Amended Notice of</p> <p>14 Deposition of Asbestos PI Committee</p> <p>15 Pursuant to Rule 30(b)(6) served by four</p> <p>16 insurance companies, One Beacon, Seaton,</p> <p>17 Geico, and Columbia. And it contains an</p> <p>18 attachment with definitions and topics</p> <p>19 which are the subject matter of</p> <p>20 testimony.</p> <p>21 Q. Okay. And can you look at</p> <p>22 the document that I put before you that's</p> <p>23 marked ACC-2.</p> <p>24 A. I have it.</p>

5 (Pages 14 to 17)

Page 14

1 Q. And identify that document,  
2 please.

3 A. That document is the  
4 Objections of the Official Committee of  
5 Asbestos Personal Injury Claimants to  
6 Rule 30(b)(6) Notices of Deposition  
7 served by Certain Plan Objectors.

8 Q. Okay. And is it correct  
9 that you are here today prepared to  
10 testify about the topics that are listed  
11 in ACC-1 subject to the objections that  
12 appear in ACC-2?

13 A. The answer to that question  
14 is yes, subject to the following caveats:  
15 To the extent that the topics in this  
16 notice or any of the other notices are  
17 subjects that the ACC has a person with  
18 knowledge on, I am here to testify about  
19 it. To the extent that the ACC doesn't  
20 have a person with knowledge on certain  
21 topics, then I am here to testify that  
22 the ACC doesn't have knowledge on those  
23 topics.

24 Q. Okay. And -

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1 A. And to the extent that  
2 occurs, we will see how it occurs in the  
3 course of the questions.

4 Q. Okay. And then you  
5 mentioned ACC and a person with the ACC.  
6 How are you using the term  
7 "ACC"?

8 A. I am using it as the entity  
9 that was appointed in the bankruptcy case  
10 by the U.S. Trustee.

11 MR. BROWN: ACC-3.

12 (ACC 30(b)(6)-3 marked for  
13 identification at this time.)

14 BY MR. BROWN:

15 Q. Okay. Mr. Lockwood, you now  
16 have before you a document that should  
17 have two exhibit labels on it. One is an  
18 Exhibit-12 from the deposition of  
19 Mr. Finke, and the other is ACC-3.

20 Could you identify the  
21 document that has been marked as ACC-3?

22 A. It appears to be a Form 8-K  
23 file by W.R. Grace & Company dated April  
24 6, 2008.

Page 16

1 Q. Have you ever seen this  
2 document before?

3 A. Frankly, I am not sure.

4 Q. Okay.

5 A. I may have. I may not have.

6 Q. All right. Why don't you go  
7 to the back of the document, starting  
8 with page 9.

9 A. Page 9 or page 8?

10 Q. I am sorry. Page 8.

11 A. I am there.

12 Q. Can you identify that  
13 document?

14 A. It appears to be a copy of a  
15 Term Sheet for the Resolution of Asbestos  
16 Personal Injury Claims entered into by a  
17 variety of parties, including the ACC.

18 Q. Okay. Have you seen the  
19 Term Sheet, either this Term Sheet or  
20 some iteration of it previously?

21 A. I have seen the original of  
22 it.

23 Q. Okay. Can you take a look  
24 at what you have before you and tell me

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1 whether it differs in any way from the  
2 original?

3 MR. FINCH: Objection.

4 THE WITNESS: On the face of  
5 it, it does not appear to  
6 different. I mean, obviously, a  
7 comparison of the original and  
8 this copy would be the definitive  
9 way of determining whether there  
10 is a difference, but this looks to  
11 be the same, as best I can recall.

12 BY MR. BROWN:

13 Q. Okay. And this document was  
14 negotiated by the parties that executed  
15 it, is that correct, or their counsel?

16 A. Broadly speaking, yes. I  
17 mean, negotiated implies human beings in  
18 a room or in some communication, and  
19 these are all entities. So various  
20 representatives of the entities that are  
21 listed here in negotiated this document  
22 on behalf of their respective principals.

23 Q. Is there anything in the  
24 Term Sheet that you can see that's

6. (Pages 18 to 21)

Page 18

1 **Inaccurate?**  
 2 MR. FINCH: Object to form.  
 3 **THE WITNESS:** To answer that  
 4 question, I would have to read  
 5 every word in the Term Sheet and  
 6 determine whether or not there are  
 7 statements in here which are  
 8 contained facts which might be  
 9 erroneously stated. I am not sure  
 10 that there are any such things.  
 11 **BY MR. BROWN:**  
 12 **Q.** Take a moment to review it,  
 13 if you would. It's not that long.  
 14 **A.** Well, I have read it. As  
 15 far as I can tell, it is accurate in the  
 16 sense that it states the terms of an  
 17 agreement, and those are the terms of the  
 18 agreement. It doesn't purport to recite  
 19 facts.  
 20 **Q.** Okay. Look at the first  
 21 sentence. There is a reference there to  
 22 certain of the principal terms and  
 23 conditions.  
 24 **Do you see that?**

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1 **A.** I do.  
 2 **Q.** Were there other principal  
 3 terms and conditions that were left off  
 4 the Term Sheet?  
 5 **A.** I don't believe there were  
 6 that had been negotiated, agreed on.  
 7 It is common that a Term  
 8 Sheet is subject to a definitive  
 9 agreement. And in a complicated  
 10 bankruptcy case, involving a complicated  
 11 settlement, it would be my understanding  
 12 and I believe the understanding of  
 13 everybody else that was involved in this  
 14 that this Term Sheet would only purport  
 15 to set out certain of the most -- what  
 16 the parties consider to be the most  
 17 important terms, and other terms would  
 18 remain to be negotiated as part of the  
 19 drafting of either the definitive Plan or  
 20 a more definitive settlement agreement or  
 21 whatever document would be required to  
 22 flesh out the details.  
 23 **Q.** Okay. Can you turn to page  
 24 9, and you will see under the Romanette

Page 20

1 5, there is a sentence that begins,  
 2 "Provided however..."?  
 3 **A.** Yes.  
 4 **Q.** Do you know to what that  
 5 refers?  
 6 MR. FINCH: Objection. I  
 7 caution the witness not to reveal  
 8 any privileged communications. If  
 9 you can answer the question  
 10 without divulging privileged  
 11 information, you can do so.  
 12 MS. HARDING: And I am going  
 13 to object also as to privilege as  
 14 to the relevancy of negotiations,  
 15 and I believe that -- well --  
 16 okay.  
 17 THE WITNESS: I am trying to  
 18 remember what this phrase referred  
 19 to at the time this Term Sheet was  
 20 entered into. As best I can  
 21 recall, at the time of the Term  
 22 Sheet, the concept that was  
 23 reflected by this language was  
 24 that what was going to be

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1 transferred to the Trust was  
 2 coverage for asbestos personal  
 3 injury claims, and to the extent  
 4 that there was coverage that  
 5 didn't -- that somehow or another  
 6 didn't cover asbestos personal  
 7 injury claims, like, for example,  
 8 workers' compensation insurance,  
 9 that wouldn't be transferred to  
 10 the Trust.  
 11 But since this Term Sheet  
 12 was superseded by the Plan  
 13 ultimately, I am not sure exactly  
 14 what the significance of this  
 15 particular term at this time is.  
 16 **BY MR. BROWN:**  
 17 **Q.** Okay. Well, putting aside  
 18 workers' compensation coverage, is there  
 19 any other coverage that you are aware of  
 20 that Grace has under the policies that  
 21 are being transferred to the Asbestos PI  
 22 Trust?  
 23 MR. FINCH: Objection to the  
 24 form.

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 THE WITNESS: The answer to 2 that is certainly, yes. 3 I mean, for example, Grace 4 has insurance beginning in -- I 5 don't know -- 1986 or so that 6 contains asbestos exclusions, 7 running up through today, and none 8 of that insurance is being 9 transferred to the Trust because 10 it doesn't provide any coverage 11 for asbestos personal injury 12 claims. 13 BY MR. BROWN: 14 Q. What if we limited it to 15 asbestos insurance rights? In other 16 words, the policies -- the asbestos 17 insurance rights are being transferred to 18 the Trust by Grace, correct? 19 A. Well, you are using a term 20 that is a term that is defined in the 21 Plan, and as defined in the Plan, the 22 asbestos insurance rights under the terms 23 of the Plan and the Insurance Transfer 24 Agreement are being transferred to the</p>	<p>1 Trying to answer a question 2 from memory that's as broad and all 3 encompassing as that, I think frankly is 4 virtually impossible, and I don't think I 5 can do it any better than I just did. 6 MR. BROWN: Okay. And just 7 so everyone knows how we are going 8 to be handling the question 9 regarding Plan documents, we are 10 going to mark certain Plan 11 exhibits as separate exhibits in 12 the deposition. 13 Mr. Lockwood has a 14 separately tabbed collection of 15 all the Plan documents. He wants 16 to work off of that. I have no 17 problem with that. But, for 18 purposes of the record, it will be 19 the individual Plan documents that 20 we are referring to. 21 THE WITNESS: For purposes 22 of the record, what I have in 23 front of me is the printed book 24 called Exhibit Book to First</p>
Page 23	Page 25
<p>1 Trust. 2 Q. Okay. And does that include 3 all the coverages under the policies that 4 are covered by that term? 5 A. I have no idea, because 6 asbestos insurance rights are not 7 asbestos insurance policies, and I have 8 not undertaken to examine each and every 9 policy that does or might provide 10 coverage for asbestos personal injury 11 claims to determine whether or not there 12 is some coverage under that policy that 13 doesn't and that might not be 14 transferred. 15 As a general proposition, my 16 recollection is that the Plan is pretty 17 specific about what's being transferred 18 and what's not. 19 There is an Exhibit-5, for 20 example, that lists various categories of 21 policies and settlement agreements and 22 things of that nature. There is the 23 Insurance Transfer Agreement; there are 24 schedules of insurance rights.</p>	<p>1 Amended Joint Plan of 2 Reorganization and Disclosure 3 Statement as of February 27, 2009, 4 which is the document that was 5 distributed to people to vote on 6 the Plan. And the only -- there 7 are no markings or anything in it. 8 What I have had done is, so 9 that I could have ready access to 10 the multiple -- well, there are 33 11 exhibits in this book, and I have 12 simply had numerical tabs placed 13 on the first page of each separate 14 exhibit, so that if somebody wants 15 me to find an exhibit, I can look 16 to the tab rather than pawing 17 through hundreds of pages of 18 documents to see where the 19 exhibit, in fact, can be found. 20 BY MR. BROWN: 21 Q. All right. Mr. Lockwood, 22 can you take a look at Exhibit 6? 23 MR. BROWN: And we will have 24 that marked as ACC-4.</p>

12 (Pages 42 to 45)

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1 I just don't remember for  
2 sure whether they were involved in  
3 the first Plan or whether they got  
4 involved between the first Plan  
5 and this Plan. I think they were  
6 involved in the first Plan.

7 BY MR. BROWN:

8 Q. Okay. Would your answer be  
9 the same for the Fresenius indemnified  
10 parties?

11 MS. HARDING: Object under  
12 408. I think we should take a  
13 break. I would like to consult  
14 with counsel.

15 MR. BROWN: Okay.

16 THE WITNESS: Does that  
17 include me or do you want to just  
18 talk to him?

19 MS. HARDING: I will talk to  
20 Nate.

21 (There was a break from  
22 10:15 a.m. to 10:17 a.m.)

23 MR. FINCH: Can we read back  
24 the pending question?

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1 (The reporter read from the  
2 record as requested.)

3 MR. FINCH: You can answer  
4 that question.

5 THE WITNESS: In general,  
6 yes, although their involvement  
7 was less.

8 BY MR. BROWN:

9 Q. Okay. What was the  
10 involvement of Sealed Air and Fresenius  
11 in the drafting of the Plan documents?

12 MR. FINCH: Objection,  
13 instruct the witness not to  
14 answer.

15 MS. HARDING: Objection.

16 MR. JACOB COHN: Basis,  
17 please.

18 MR. FINCH: Basis is Judge  
19 Fitzgerald's ruling that Plan  
20 negotiations and the draft Plan  
21 Agreement are not relevant to the  
22 confirmability of the Plan.

23 MS. HARDING: Same  
24 objection.

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1 BY MR. BROWN:

2 Q. Let me, Mr. Lockwood, refer  
3 you back to ACC-2, which was the  
4 objection, and direct your attention  
5 specifically to paragraph 3.

6 A. I see it.

7 MR. BROWN: Okay. This is  
8 more directed to Nate than anyone  
9 else. There are, as you might  
10 guess, a whole host of questions  
11 that lots of people in this room,  
12 including myself, would want to  
13 ask concerning the negotiations of  
14 the Plan and the Plan documents as  
15 well as questions about prior  
16 drafts that weren't filed.

17 Is it safe to say that you  
18 will object to those questions and  
19 instruct the witness not to  
20 answer?

21 MR. FINCH: That is correct.

22 MR. BROWN: Okay. Then with  
23 the caveat that we won't ask them  
24 simply because we are not here to

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1 waste everyone's time, I am going  
2 to move forward and not ask  
3 questions about the negotiations.

4 Can we have an agreement on  
5 that ground?

6 MR. FINCH: Sure. We can  
7 have an agreement on that point.

8 MR. BROWN: And in the event  
9 that that is ever reversed or your  
10 position is not upheld by the  
11 court, we would have an  
12 opportunity to come back and ask  
13 questions about the drafting as  
14 well as the negotiations.

15 MR. FINCH: If Judge  
16 Fitzgerald reverses herself on  
17 what she has ruled in various  
18 other cases, you would have that  
19 opportunity.

20 MR. BROWN: Or some higher  
21 court.

22 MR. FINCH: Or some higher  
23 court.

24 MR. BROWN: Fair enough.



13 (Pages 46 to 49)

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1 **MR. JACOB COHN:** I want to  
2 be perfectly clear here that you  
3 are not relying upon not a ruling  
4 that you don't need to answer  
5 questions at these depositions on  
6 this subject but your position is  
7 that this is a relevance objection  
8 and you are instructing not to  
9 answer on the basis of relevance.

10 **MR. FINCH:** That's right.

11 **MR. JACOB COHN:** And you are  
12 aware of the local Delaware rules  
13 on this subject?

14 **MR. FINCH:** Yes, I am.

15 **MR. JACOB COHN:** I am.

16 **MR. BROWN:** Thanks, Jacob.

17 **MR. SPEIGHTS:** Excuse me.  
18 This is Dan Speights, representing  
19 Anderson Memorial Hospital.

20 **Mr. Finch,** would you advise  
21 us of what rulings you are  
22 referring to?

23 **MR. FINCH:** Sure. If you  
24 look at the ACC's objections to

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1 the 30(b)(6) notice, Dan --

2 **MR. SPEIGHTS:** If it's  
3 contained in there, just refer to.  
4 I want to make sure if we want to  
5 file a motion, we have the basis  
6 of your objection.

7 **MR. FINCH:** Yes. The basis  
8 of the objection is set forth on  
9 page 2, paragraph number 3, and  
10 ACC deposition Exhibit-2 to this  
11 deposition.

12 **MR. SPEIGHTS:** Thank you,  
13 Mr. Finch.

14 **BY MR. BROWN:**

15 **Q.** Okay. Mr. Lockwood, in the  
16 period between the Term Sheet and the  
17 filing of the initial Plan in September,  
18 was any asbestos insurance entity invited  
19 to participate in the negotiation of the  
20 Plan documents or the drafting of the  
21 Plan documents?

22 **MS. HARDING:** Same  
23 objection.

24 **THE WITNESS:** I have no

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1 knowledge whether they were or  
2 were not.

3 **BY MR. BROWN:**

4 **Q.** To your knowledge, did any  
5 asbestos insurance entity actually  
6 participate?

7 **MS. HARDING:** Same  
8 objection.

9 **THE WITNESS:** I have no  
10 knowledge that they did.

11 **BY MR. BROWN:**

12 **Q.** Was any asbestos insurance  
13 entity consulted concerning any term or  
14 provision in the Joint Plan or any Plan  
15 documents?

16 **MS. HARDING:** Same  
17 objection.

18 **THE WITNESS:** In the same  
19 period?

20 **MR. BROWN:** Correct.

21 **BY MR. BROWN:**

22 **Q.** From April 2008 to  
23 September, when the initial Plan was  
24 filed in September of 2008.

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1 **A.** I have no knowledge that  
2 anyone was.

3 **Q.** Were any asbestos insurance  
4 entities consulted regarding the  
5 assignment or transfer of their policies  
6 or proceeds under their policies to the  
7 Asbestos PI Trust in that time period?

8 **MS. HARDING:** Same  
9 objection.

10 **THE WITNESS:** I have no  
11 knowledge that they were or were  
12 not.

13 **BY MR. BROWN:**

14 **Q.** Did any consent?

15 **A.** I have no knowledge --

16 **MS. HARDING:** Same  
17 objection.

18 **THE WITNESS:** -- that anyone  
19 did, in fact, consent.

20 **BY MR. BROWN:**

21 **Q.** Okay. Now, I want to focus  
22 your attention now on the period after  
23 the initial Plan was filed.

24 **In that period, after the**



25 (Pages 94 to 97)

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<p>1 addition or on an ad hoc basis, it was 2 done. But in either event, I don't 3 recall that process ever having been 4 contested by anybody and, therefore, been 5 the subject of a judicial opinion that it 6 was or wasn't okay.</p> <p>7 Q. Let's look back at the 8 definition, and I want to focus your 9 attention on the language that appears 10 after the italicized phrase, "provided 11 however."</p> <p>12 MR. FINCH: This is 13 definition 200?</p> <p>14 MR. BROWN: Yes.</p> <p>15 THE WITNESS: After the 16 italicized, "provided however," 17 yes.</p> <p>18 BY MR. BROWN: 19 Q. That language. 20 A. Yes. 21 Q. There is a reference there 22 to "the Asbestos Insurance Settlement 23 Agreement is approved by the Court..." 24 Do you see that?</p>	<p>1 provided."</p> <p>2 A. Yes.</p> <p>3 Q. My question with respect to 4 this language is, how does a settled 5 asbestos insurance company on Exhibit-S 6 ascertain the scope of the protection 7 that is being afforded it by the asbestos 8 PI channelling injunction?</p> <p>9 MS. HARDING: Objection to 10 form.</p> <p>11 MR. FINCH: Same objection.</p> <p>12 THE WITNESS: The same way 13 anybody else in the universe would 14 try and figure that out.</p> <p>15 To say that 524(g) is not 16 the world's most precisely worded 17 statute is something of an 18 understatement. Combustion 19 engineering has made it pretty 20 clear that you can get the 21 protection provided by the 22 statute, but you can't protect 23 anything that's not covered by the 24 statute.</p>
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<p>1 A. Yes.</p> <p>2 Q. When is it anticipated that 3 such approval will be sought?</p> <p>4 A. Well, it sort of depends on 5 which Asbestos Insurance Settlement 6 Agreement you are talking about.</p> <p>7 Q. Pre-petition.</p> <p>8 A. My anticipation is that the 9 confirmation process itself, since those 10 agreements are already listed on 11 Exhibit-5, would constitute the approval 12 process. I don't know that we 13 contemplate at the moment a separate 14 procedure for submitting those agreements 15 for approval.</p> <p>16 And if nobody -- I mean, if 17 somebody objected, I guess you might wind 18 up with some kind of separate proceeding. 19 But at the moment, at least, my view, it 20 would be rolled into the confirmation 21 process.</p> <p>22 Q. Okay. Let me focus your 23 attention now on the "further provided," 24 the language that appears after "further</p>	<p>1 So if you've got a type of 2 claim that nobody is fighting you 3 about in a confirmation process 4 over whether it is or isn't 5 covered, then you have to make 6 your own judgment as to whether or 7 not some claim that might be 8 brought against any 9 asbestos-protected party might be 10 covered.</p> <p>11 You don't put in a Plan or a 12 Disclosure Statement a multipage 13 litany of hypothetical causes of 14 action that you think might or 15 might not be brought by somebody 16 at some time, somewhere, and then 17 say, in my opinion, these fall on 18 the good side of the line and 19 these fall on the bad side of the 20 line.</p> <p>21 BY MR. BROWN: 22 Q. Okay. There are a number of 23 different asbestos-protected parties 24 under this Plan.</p>

30 (Pages 114 to 117)

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1 agreements, under the TDP, will satisfy  
2 the obligations of the Debtors to those  
3 insurers, such that they will have to  
4 perform under those agreements.

5 The asbestos -- the insurers  
6 holding such agreements have indicated  
7 that they disagree with that legal  
8 principle, or proposition. There will be  
9 in Phase 2 of the confirmation  
10 proceedings evidence taken as to the  
11 extent to which the substitution for the  
12 Trust and the TDP process for Grace is  
13 sufficiently materially different and  
14 adverse to, what I will call, the  
15 reimbursement insurers that it is not  
16 legally permissible for the court to say  
17 that under bankruptcy preemption  
18 principles, those insurers have to  
19 perform under those agreements.

20 That's clearly going to be a  
21 confirmation issue, and we have conceded  
22 under other circumstances that that is  
23 something that we don't contend the  
24 Insured's neutrality provision applies

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1 liens or encumbrances or whatever.

2 The exception is put in  
3 frankly because in other cases, I  
4 think Federal-Mogul, some insurers  
5 -- or maybe it was Kaiser -- I  
6 don't know -- some insurers took  
7 the position that this kind of a  
8 clause might be read to override  
9 the asbestos insurance coverage  
10 defense carve-out. And so for  
11 avoidance of doubt, we threw in  
12 the exception.

13 BY MR. BROWN:

14 Q. Okay. You are familiar, are  
15 you not, with various claims that have  
16 been asserted or threatened by Scotts,  
17 Kaneb, BNSF, and Libby with respect to  
18 asbestos insurance policies, aren't you?

19 A. Yes.

20 Q. Are whatever claims they  
21 have, if any, through any of the  
22 insurance asbestos policies, are they  
23 being extinguished by virtue of this  
24 sentence?

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1 to.

2 Q. Can I turn you now to  
3 Section 7.22, subsection (d), Romanette  
4 (ii).

5 A. I see it.

6 Q. The last sentence of that  
7 section says, "Asbestos Insurance Rights  
8 shall be so vested free and clear of all  
9 Encumbrances, liens, security interests,  
10 and other Claims or causes of action,  
11 except that all Asbestos Insurance  
12 Coverage Defenses is preserved."

13 What does that mean?

14 MS. HARDING: Object to  
15 form.

16 THE WITNESS: Well, it  
17 basically means that if somebody  
18 thinks that they have got a lien  
19 on asbestos insurance rights that  
20 are purporting to be transferred  
21 to the Trust, they better show up  
22 and complain about it because the  
23 purpose of the Plan is to provide  
24 a transfer that is free of such

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1 MS. HARDING: Object to  
2 form.

3 THE WITNESS: My  
4 understanding of the Plan, and I  
5 have to confess that I have that I  
6 am not sure I thought about that  
7 question before, is that those  
8 types of claims are being  
9 channelled to the Trust to the  
10 extent that there are Grace  
11 indemnities of insurers with  
12 respect to such claims.

13 I think there is a TDP  
14 provision -- again, it's 5.12 or  
15 5.13 -- that is, in essence, an  
16 acknowledgment that those types of  
17 claims are treated as indirect PI  
18 Trust claims.

19 And so I would have to say  
20 that I don't believe that this  
21 provision is intended by some sort  
22 of self-operative effect to  
23 extinguish -- this provision, to  
24 me, is more like a C363B type of

31 (Pages 118 to 121)

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1 provision, essentially that we are  
2 going to transfer the assets to  
3 the Trust and if you got a claim  
4 or an interest in the assets, then  
5 you can litigate that claim  
6 against the Trust.

7 But we are going, I guess,  
8 have potential confirmation  
9 objections about whether there are  
10 any such claims. I mean, the mere  
11 assertion of a claim doesn't mean  
12 that it's valid.

13 BY MR. BROWN:

14 Q. Okay. If I can direct your  
15 attention down to 7.2.4, which is  
16 entitled Assignment and Enforcement of  
17 Asbestos PI Trust Causes of Action.

18 A. Yes.

19 Q. I must confess, I am a bit  
20 baffled by this one, so I need some help  
21 with it.

22 How do Asbestos PI Trust  
23 causes of action differ from asbestos  
24 insurance rights?

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1 Asbestos PI Trust claim against the  
2 Trust, the Trust could assert Grace's  
3 contribution rights as a counterclaim to  
4 that. That's two categories of things  
5 that this is intended to include.

6 Q. Okay. Let's go to page 64,  
7 7.2.6, Creation and Termination of the  
8 Asbestos PI TAC.

9 A. Correct.

10 Q. It says, "On or before the  
11 Confirmation Date, the initial members of  
12 the Asbestos PI TAC shall be selected by  
13 the Asbestos PI Committee."

14 That has already occurred,  
15 correct?

16 A. Correct. They are  
17 identified in the Asbestos PI Trust  
18 Agreement.

19 Q. Okay. How many actual  
20 committee members are there on the  
21 Asbestos PI Committee?

22 A. I don't remember. But we  
23 have the Disclosure Statement here. I  
24 could pretty quickly find out by just

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1 A. Well, I have to go back and  
2 look at the definitions to answer that  
3 question.

4 Well, I think asbestos PI  
5 Trust causes of action does include  
6 asbestos insurance rights.

7 Q. What else does it include?

8 A. Well, if you look at the  
9 definition, it includes defenses such  
10 that, for example, if a claimant says, I  
11 have a valid claim against Grace that's  
12 channelled to the Trust and the Trust  
13 disagrees with it, the Trust retains all  
14 the defenses to that claim that Grace  
15 would have had. That's clause A under  
16 definition 47.

17 Q. Okay.

18 A. Clause B is, for example,  
19 contribution rights, et cetera. So, for  
20 example, if the Trust has -- if Grace has  
21 contribution rights that it has not  
22 asserted and that which are still valid  
23 against a codefendant in a tort system  
24 and the codefendant brings in indirect

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1 looking at it where they are identified.

2 Q. Okay.

3 A. It's certainly more than the  
4 four that are going to be on the TAC.

5 Q. Okay. Is it fair to say  
6 that the actual committee members who are  
7 asbestos claimants act through their tort  
8 counsel in connection with their  
9 obligations as committee members?

10 A. As a general proposition,  
11 that's true. In any given committee on  
12 any given issue, an individual member  
13 might choose to show up and act on their  
14 own behalf, and there have been some  
15 examples in the past where that has  
16 occurred.

17 But, as a general  
18 proposition, the committee members are  
19 blue-collar folks of limited legal  
20 knowledge, and they delegate to their  
21 personal injury lawyers their sort of  
22 activities acting for them as an agent on  
23 these committees.

24 Q. Okay. You are counsel to

34 (Pages 130 to 133)

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1 form.

2 THE WITNESS:

3 Hypothetically, probably yes. It  
4 would be more difficult, but,  
5 hypothetically, yes. You could  
6 have -- we have had some plans  
7 that had coverage in place  
8 agreements with insurers, for  
9 example, that we felt satisfied  
10 524(g). But you have to get the  
11 insurers' agreement to have a  
12 coverage in place agreement.

13 BY MR. BROWN:

14 Q. Okay. Let's go now to  
15 condition (r) -- I am sorry. Condition  
16 (s).

17 A. Yes.

18 Q. Now, for purposes of my  
19 question, I want you to assume that when  
20 I use the term "settled asbestos  
21 insurance companies," I want you to  
22 assume that those that are pre-petition.

23 A. Okay.

24 Q. And my question is a very

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1 because we think they are nice folks.

2 Q. I didn't think so.

3 A. Settled asbestos insurers,  
4 by definition, are insurers that have  
5 indemnity rights against Grace.

6 Q. They have also paid a lot of  
7 money?

8 A. And they paid a lot of money  
9 in the past. But the past money -- money  
10 is fungible. The past money went into  
11 Grace's coffers, went out or didn't go  
12 out, et cetera. But they are not being  
13 asked for any new money.

14 But Grace has an economic  
15 interest in not having asbestos PI claims  
16 brought against those insurers that could  
17 then trigger an indemnity obligation of  
18 Grace to the insurer against which that  
19 asbestos PI claim was asserted. They  
20 have an economic interest in preventing  
21 that.

22 So the deal is channel any  
23 such claim that might give rise to the  
24 asbestos indemnity claim to the Trust.

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1 general one, because I have heard  
2 different views, and that is, what  
3 benefits are being provided by or on  
4 behalf of settled asbestos insurance  
5 companies listed on Exhibit-5?

6 A. It is the position of the  
7 ACC that Grace is paying close to  
8 \$3 billion of value to the Trust on  
9 behalf of not only itself but a variety  
10 of other protected parties, including  
11 Non-Debtor affiliates and, in this  
12 particular case, settled asbestos  
13 insurers.

14 And it is doing so on behalf  
15 of settled asbestos insurers because  
16 those insurers have indemnity claims  
17 against Grace, which are being, if they  
18 hypothetically could ever occur, are  
19 being channelled to the Trust as a means  
20 of protecting Grace against such -- well,  
21 let me back up.

22 The purpose of putting  
23 settled asbestos insurers in here is not  
24 to provide a gratuitous asbestos insurers

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1 and in exchange for that, part of what  
2 Grace is paying you is to get rid of  
3 asbestos PI claims which include indirect  
4 asbestos PI claims for indemnity or  
5 direct asbestos PI claims for indemnity.

6 Q. Okay.

7 A. And that's the basis.

8 Q. I think you said at the very  
9 beginning of either the last question or  
10 the one before that Grace was  
11 contributing 3 million?

12 A. Billion.

13 Q. That's what I thought.  
14 Okay. I just wanted to make sure I had  
15 the number correct.

16 A. I mean, that's our view of  
17 the approximate amount of what they were  
18 contributing at the time we made the  
19 deal, I guess would be a better way to  
20 put it. There are other people that  
21 might value it differently.

22 Some of things that were  
23 worth more at the time the deal was made  
24 are worth less today but hopefully will

93 (Pages 366 to 369)

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<p>1 A. Well, the answer to that is, 2 first, normally the punitive or potential 3 indirect claimant, as a defendant in the 4 state court action, would have the right 5 to get discovery from the plaintiff. And 6 that discovery in many jurisdictions, if 7 not most, would include discovery of the 8 plaintiff as to whether that plaintiff 9 had filed claims with any Trust, 10 including the prospective Grace Trust. 11 If the state court, for some 12 reason or another, said that that 13 discovery against the plaintiff would not 14 be permitted, it seems unlikely that 15 discovery of the same information from a 16 Trust would be permitted because the 17 hypothesis -- by hypothesis, the state 18 law doesn't regard it as relevant. So 19 under normal circumstances, it's hard to 20 imagine why an indirect claimant would 21 ever need discovery from a Trust. 22 That stated, there are 23 provisions in Section 6.5 that allow 24 indirect claimants or anybody else to try</p>	<p>1 isn't bound by the settlement agreement 2 is a matter, again, of federal or state 3 applicable non-bankruptcy law. 4 Q. But as you interpret the TDP 5 then, there is not an outright 6 prohibition from a Payne in discovery 7 against the Trust? 8 A. No. 9 Q. Okay. 10 MS. COBB: Well, those are 11 my questions, and I reserve the 12 right to ask follow-up questions, 13 depending upon the progression of 14 the questioning by the insurers. 15 But I will pass the witness to 16 Mr. Cohn. 17 MR. DANIEL COHN: Thank you. 18 MS. COBB: And thank you for 19 your courtesy, Dan. 20 MR. DANIEL COHN: You are 21 very welcome. 22 - - - 23 EXAMINATION 24 - - -</p>
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<p>1 and get a subpoena from a court, either 2 the Bankruptcy Court or the Delaware 3 Court or the United States Court for the 4 District of Delaware, for such records. 5 And whichever court that subpoena is 6 sought to be issued from will decide 7 whether or not the prospective indirect 8 claimant, because you won't be an 9 indirect claimant until you lose the suit 10 with the plaintiff -- whether that 11 prospective indirect claimant will or 12 will not be given access to that 13 information by the Trust. But the first 14 line of attack is getting it from the 15 plaintiff. 16 And I might add, other than 17 the recitation that the submission and 18 the proof of claim is part of settlement 19 discussions, which is simply a view like 20 any defendant and a plaintiff might say 21 we agree that our settlement discussions 22 and our settlement agreement is 23 confidential, whether or not that makes 24 it non discoverable to a third party that</p>	<p>1 BY MR. DANIEL COHN: 2 Q. All right, Mr. Lockwood, 3 you are the representative of the 4 Asbestos PI Committee who is most 5 knowledgeable on the topics as to which 6 the Libby claimants have designated a 7 Rule 30(b)(6) deposition? 8 A. Most knowledgeable about the 9 full range of the topics. There might be 10 individual topics that I might defer, as 11 I have in a few questions earlier, for 12 example, to my partner, Mr. Inselbuch, 13 whose deposition is scheduled, but yes. 14 Q. And if I may, I want to 15 start off with a couple of matters of 16 terminology. When I use the term "Libby 17 claimants," I am referring to the clients 18 of my firm who are people who allege that 19 they have suffered personal injury from 20 exposure to asbestos of Grace in Lincoln 21 County, Montana. 22 A. Okay. 23 Q. And the other terminological 24 matter I want to get straight is that,</p>